

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DERRICK HAMILTON,**

**Plaintiff,**

**vs.**

**9:10-CV-1066  
(MAD/RFT)**

**BRIAN FISHER<sup>1</sup>, Commissioner of New York State  
Department of Correctional Services, JOSEPH T.  
SMITH, Superintendent of Shawangunk Corr.,  
JOHN MALY, Deputy Shawangunk Corr. Fac.,  
KAY KNOTT, Deputy of Shawangunk Corr. Fac.,  
DENNIS GIGLIO, Captain of Shawangunk Corr. Fac.,  
G. GARDNER, Lieutenant of Shawangunk Corr. Fac.,  
R.K. WOODS, Superintendent of Shawangunk Corr.  
Fac., M. SHEAHAN, Deputy Supt. of Shawangunk  
Corr. Fac., SERGEANT BRAND, Upstate Corr. Fac.,  
CURTIS DROWNS, Commissioner Hearing Officer,  
NORMAN BEZIO, Director of Special Housing, H. MOSS,  
Sergeant Shawangunk Corr. Fac., M. SIGNORELLA, Corr.  
Officer, Shawangunk Corr. Fac., D. FORBES, Corr.  
Officer, Shawangunk Corr. Fac., JOE WOLCZYK,  
COMMISSIONER HEARING OFFICER, NEIL  
HOCHMAN, Psychologist, Shawangunk Corr. Fac., SUSAN  
STRICKLAND, Mental Health Unit Chief Auburn Corr.  
Fac., OSMAN YILDIZ, Social Worker, Sullivan Corr. Fac.,  
SUE ANN SMITH, Unit Chief, Sullivan Corr. Fac., DOCTOR  
MAHMUD, Psychiatrist, Sullivan Corr. Fac., DOREEN FABER,  
Social Worker, Auburn Corr. Fac., CHRISTOPHER P. MAYER,  
Unit Chief, Auburn Corr. Fac.**

**Defendants.**

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<sup>1</sup> The correct spelling of defendant's name is "Brian Fischer".

**APPEARANCES:**

**OF COUNSEL:**

**DERRICK HAMILTON**

175 Diamond Street  
New Haven, Connecticut 06515  
*Plaintiff pro se*

**HON. ERIC T. SCHNEIDERMAN**

Attorney General of the State of New York  
The Capitol  
Albany, New York 12224  
*Attorney for Defendants*

Cathy Y. Sheehan, Esq.

**Mae A. D'Agostino, U.S. District Judge:**

**ORDER**

In this *pro se* action under 42 U.S.C. § 1983, plaintiff, an inmate in the custody of the New York State Department of Correctional and Community Supervision (“DOCCS”), claims that defendants violated his Eighth Amendment rights, First Amendment rights and Due Process rights. Additionally, plaintiff alleges that defendants retaliated against him for filing grievances and conspired against him. Defendants’ moved to dismiss the amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. No. 47). The motions were referred to United States Magistrate Judge Randolph R. Treece for a Report-Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3( c ). Magistrate Judge Treece issued a Report- Recommendation (Dkt. No. 52) recommending that defendants’ motion to dismiss be granted in part and denied in part.<sup>2</sup>

When a party files specific objections to a magistrate judge's report-recommendation, the district court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). When a party fails to make specific objections, however, the court reviews the magistrate judge's report for

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<sup>2</sup> The Clerk is directed to append Judge Treece's Report-Recommendation to this decision, and familiarity is presumed. (Dkt. No. 52).

clear error. *See Farid v. Bouey*, 554 F. Supp. 2d 301, 307 (N.D.N.Y. 2008); *see also Gamble v. Barnhart*, No. 02CV1126, 2004 WL 2725126, \*1 (S.D.N.Y. Nov. 29, 2004) (citations omitted). After the appropriate review, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

After careful review of all of the papers herein, including the Magistrate Judge's Report-Recommendation, and no objections submitted thereto, it is

**ORDERED** that:

1. Magistrate Judge Treece's Report-Recommendation and Order is **ADOPTED** for the reasons stated therein.
2. The Clerk of the Court shall serve a copy of this Order and Magistrate Judge Treece's February 29, 2012 Report-Recommendation and Order on all parties in compliance with the Local Rules.

**IT IS SO ORDERED.**

Dated: March 22, 2012  
Albany, New York

  
Mae A. D'Agostino  
U.S. District Judge